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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,621	10/28/2003	Stefan Kiefer	13914-016001 / 2003P00626	3903
32864	7590	01/02/2008	EXAMINER	
FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	
			MAIL DATE	DELIVERY MODE
			01/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/695,621

Applicant(s)

KIEFER ET AL.

Examiner

Mark Fadok

Art Unit

3625

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Election***

The examiner is in receipt of applicant's response to office action mailed 4/5/2007, which was received 10/5/2007. Acknowledgement is made to the amendment to claims 13. The examiner has carefully considered applicant's remarks and amendment, but does not find them persuasive, therefore the previous rejection is restated below, amended as necessitated by amendment.

### **Examiner's Note**

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 13-15 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al (2006/0149653).

**In regards to claim 13**, Davis discloses a computer-implemented method of managing bid pricing information, comprising: receiving transaction information and item data from a buyer (FIG 19);

generating a bid invitation containing entries relating to the transaction information and item data (FIG 19), and

making the bid invitation available to a plurality of potential bidders (FIG 19, item 605);

receiving from one or more of the potential bidders bid responses containing a complex pricing structure and corresponding complex pricing amounts (FIG 19A);

wherein the complex pricing structure is selected and supplied by each potential bidder (para 0010) and

the complex pricing structures supplied by two or more potential bidders include bids with multiple different pricing amounts. (para 0019, 0034 and 0037,00148)

applicant's specification defines complex pricing in terms of discount pricing, see applicant's specification PG PUB 20050091122, para 0028 for a definition of complex pricing that includes volume discounts), since these complex pricing scenarios are distributed to others when an auction is reopened to allow other suppliers to provide the

same complex bidding (Davis, para 0019) the limitation of at least two bidders providing multiple different pricing amounts is taught by Davis. Applicant may argue that the different discounts are not specifically noted as prices but terms, however as is clear in para 0034, 0035 and 0148 of Davis, costs of the product provide in a complex pricing when scenarios are run applying the different scenarios and resulting in a variable cost/price or complex pricing.

selecting a winning bidder based on the complex pricing amounts (FIG 19B).

**In regards to claim 14**, Davis teaches wherein a complex pricing structure from a first bidder is made available for review by other potential bidders (FIG 19B, item 627).

**In regards to claim 15**, Davis teaches wherein complex pricing amounts from a first bidder are made available for review by other potential bidders (FIG 19B, item 627).

**In regards to claim 21**, Davis teaches wherein the complex pricing structure comprises date-based pricing information (FIG 19B, item 614).

### ***Response to Arguments***

As previously stated in the office action mailed 4/5/2007.

Applicant's arguments filed 1/17/2007 have been fully considered but they are not persuasive.

Applicant argues that Davis does not teach that each seller provides complex pricing to the buyer. The examiner disagrees and directs the applicant to para 0010

where Davis clearly teaches providing among other terms to be considered by the buyer, variable discount pricing.

Therefore the examiner has already addressed the matter of complex pricing as is defined in applicant's specification. That is, volume discounts give variable pricing by offering discounts to the item pricing when larger volumes are ordered.

### ***Conclusion***

This is an RCE of applicant's earlier submitted claims filed 1/17/2007. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier filed claim grouping. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

Alexandria, Va. 22313-1450

or faxed to:

**571-273-8300**

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

**571.272.3600**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Application/Control Number:  
10/695,621  
Art Unit: 3625

Page 7

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Primary Examiner